92-1877

Supreme Court, U.S.
FILED
MAY 24 1993
OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ABEL H. HERNANDEZ, PETIONER

v.

DONALD B. RICE, SECRETARY OF THE AIR FORCE

ON PETITION FOR A WRIT OF CERTIORI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ABEL H. HERNANDEZ
406 "H" St.
San Antonio, Texas 78220
(512)333-1600

Question Presented

Petitioner,Petitions for a Writ of Certiorari,on summary judgment of the low court for the western district court of Texas, and the opinion of the fifth circuit court section for the Western district of Texas,which is in conflict with the opinion of another court, of Alabama.

The fifth circuit court,section for the Norhtern Dist. of Alabama/ Pettway vs American Cast Iron Pipe Co. 411 F2d 998.....held that where charge against employer for alleged violation of Civil Rights Act otherwise satsfies the liberal requirements of a charge,charging party is exercising a protected right under the Act and may not be dis charge for such a writing,,

CERTIFICATE OF INTERESTED PERSONS

Magmt of Kelly AFB Texas: bldg 326
Tommy B Jorden-Deputy Dir./Steven
H Doneghy Division chief/ Carlos
Alvarado Branch/Afred Meina/Crespin
N. Vasquez/Herbert T Rippa/Ad Albert
Martinez/Frank C Schutter/John w.
Pike Section/Richard D Kessen/Home
Cadana/Refugio S Rios/Herman D Sanchez
Arturo Gill/Richard N Nichls/
Gerald S Keller/Poicarpio Sanchez/
Alton M Nebgen/ John R Laymon/
Guadalope Sauceda/Homer A Brooks:

Dora A Trevino Chief EEO counselor:
Elia Hernandez Lead counsel O&M-Tenants
Ldia Noriaga Lead counselor/ Warren
Wilson/Yolanda Aranda/Milton Whitehead
Alice Mehran/Louisa Herrera.

Equal Employment Opportunity Commision
1801 L ST. NW., Washington DC 20507
Chief of Staff Pamela Talkin/
Special asst. Ken Masugi/Jacy Thurmond
Alan Forst/Linda Rule/Executive
Officer Secretariat Francis/vice chman
Rosalie/special asst. Sylva Danovitch
Murhp/Gallegos/Micheal Baldanado/
Legal asst. Glady Cellazo/Comm Tony
Gallegos/Evan Kemp/special asst.
Christopher G Bell/Sherry Powers/comm
Joy Cherian/Exec. asst. Raj Gupta/
special asst. Byron Spears/Gen. couns
el Charles Shanor/inspector gen. Willi
am Miller/Dir. communications Legislat
affairs Deborah Graham/Dir. of legal
counsel Richard Komer/Dir. of magmt
John Seal/Dir. of Program operation
James Troy/

American Federal of Government Employee Local 1617 Union Office 3311 Roselawn Rd. San Antonio,Texas 78226.

Pres. Lourdes Blanche Rodriquez/Exec. V Pres. R.C. Rodriquez/1st V. Pres. Pedro Leano/Treasury Jesus Huerta/secretary Rore Mari Badrak/Chief Steward Alex Rodriquez/asst Chief Steward Santa Almares/chief Trustee Mary Lou Arce/ Trustee Robert Monez/Trustee Ray Recha.

AF CARA/ARD Wright Patterson AFB Ohio 45433-5000

Ronald F. Ederer U.S. Atty/Asst US Atty Jack B Moynihan 727 E Durango Blvd Suite A-601 San Antonio,Texas 78206.

Micheal L. Colopy Maj,USAF Gen. Litigan Division,1501 Wilson Blvd. 7th floor Arlington,VA 22209.

The unersigned counsel of record certifies that the following listed persons have an interest in the out come of this case;

Signature of Pro Se
406 "H" ST.
San Antonio,Texas 78220

Table of Contents

	page
Opinion below	1
jurisdiction	4
Staute involved	4
Argument	7
Conclusion	18
Appendix A Detective Training school.	a20
Appendix B certificate of . . .	a21
completion San Antonio College...	a22
Appendix C Letter to Pres. of. . S.A. college.	a23
Appendix D Placement Data Brief for Mr. Hernandez.	a24
Appendix E suggestion by Mr. . . Hernandezto the Air Force suggestion program, booklet to order parts, date June 1987.	a25
Appendix F Hernandez 1987, the... tool I made in1983,was not in use before,my suggestion.	a26
Appendix G petitioners objection.. of Oct.8,1992 to magistrate recommandation.	a27
Appendix H Magistrate counter..... claim to petitioners objection of Oct.8,1992.	a30
Appendix I Notice of appeal to ... the 5th cir.	a33
Appendix J opinion of the 5th..... cir.	a36
Appendix K Crisis in command.....	a46
Appendix L the most power..... political Leader in U.S. from Chicago, a democrat.	a49
Appendix M Bexar Co. Early..... childhood Development Program.	a50
Appendix N Letter to States repr.. Lou Nelle Suttens.	a52
Appendix O conserning Socialism.. and Communism,(Karl Marx).	a54

Appendix P Marx thaught the workers..a57
would overthrow capitalism and
take power.
Appendix Q It was a long bloody.....a59
campaign for Lee was a great general.
Appendix S Indian Leader,made..... a61
commander brigate general by the
Confederate government.

Table of Authorities

cases: page

Dioguardi vs Durning 139 F2d 774.. 2,3
Cohill vs Cahill 28 F2d 879.....3
Pettway vs Amer. Cast Iron..... 4
pipe Co. 411 F2d 998.
Diman vs Combustion Engineering.....10
284 F2d 57.
Hanna vs Chyler motor Corp..... 10
44 F. Supp 802.
Guse vs J.C.P. Co.,Inc.562 F2d 6....11
Mose vs Sun Oil Co. 636 F2d 154(a)..19

Statutes

Writ of Certiorari 28 USC 1254 4
Title VII 42 USC 2000e-16.....4,5,
Tennessee Valley Authority 1491....5
Pro Se appearance personnal.....5
are by counsel, 28USC 1654.
Indian claims.28 USC 1505..... . .5
3 Moor's F.R. 17... 15

No.

In the Supreme Court of the United States

October Term,1993

Abel H. Hernandez, Petitioner

vs

Donald B. Rice, Secretary of the Air Force,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

Opinion Below

During the time relvent to this case, petitioner was employed at Kelly Air Force Base,as an Electrical Equipment Repair,WG-2854-09.

Opnion of the 5th fifth p. Although Hernandez proceeded pro se he had "no liscense to harass others,,, is in con flict with the opinion of another court

second Cir.,,Dieguardi vs Durning 139 F2d 774: Mandez,Higginbotham,Smith,and Demoss,cir. judges: see petitioners two year college diploma,in political science and Liberal arts,education specialty, appendix .

5th cir. p. Our prior sanctions of Hernandez ,pparently had no effect on him,as a result,we will award slightly larger sanctions this time with the hop that Hernandez will stop his abuse in the the future. Mandez(Hispanic).

Sept. 29,1992: Taylor(Black),Jully, Duhe,and Barksdale,cir, judges: see petition of Dec.,92. cc to Supreme U.S. and Solicitor Gen. Dept. of Justice W.D C..

,,,,,,,,,, 5th cir. the appeal is friveleus and is hereby dismissed,,,,, is in conflict with the opinion of ano ther court: Hernandez has filed his appeal pro se offer " no impenetrable-

(incable of being comprehende)shield, for one acting pro se has no license to harass other" this opinion by the 5th cir. is in conflict with opinion of ano ther court,2nd cir. court of appeals: Dioguardi vs Durning 139 F2d 774: A li tigation has the privilege of declin- ing all legal help not withstanding that it may be difficult for court to arrive at justice unless litigant con sents to recieve legal assisitant in the presentation of his case in view of litigant's limit ability to write and speak English.

5th cir. opinion appendix ,the appeal is frivelous and is hereby dism issed,,, is in conflict with the opin- ion of another court : Cohill vs Cahil 28 F2d 879: the dist. court may not di smiss a complaint on the grounds that it is frivelous,,,,

The 5th cir. sanction in the amount of

$500.00 attorneys fee and double costs, is in conflict with the opinion of another court: the 5th cir, court ,section for the Northern dist. of Alabama/Pettway vs American Cast Iron Pipe Co. 411 F2d 998,,, held that where charge against employer for alleged violation of Civil Rights Act otherwise satifies the Liberal requirements of a charge, charging party is exercising a protected right under the Act and may not be discharge for such a writing,,,

Jurisdiction

This court has jurisdiction under 28 U.S.C. 1254 by writ of certierari granted to any petition,,

The Supreme court has jurisdiction pursuant to 42 U.S.C. 2000e-16 Title VII for redress,for federal employment discrimination.

Statute Involved

This court has jurisdiction pursuant

pursuant to 1491,claims against United States generally, actions involving Ten nessee Valley Authority:(a)(1)The United States claims court shall have jurisdict ion to render judgment upon any claim against theUnited States grounded either upon the constitution,or any act of con gress,,,,

The Supreme court has jurisdiction pursuant to 42 U.S.C. 2000e-16title VII for redress for federal employment discr imination.

The Supreme court has jurisdiction pursuant to 28 U.S.C. 1654 Pro Se:- appearance personally or by counsel.

Yhe Supreme court has jurisdiction pur suant to 28 U.S.C. 1505 Indain claims: United States claims court shall have jurisdiction of any claim against the United States, accrusing after August 13 1946, in Favor of any Indian tribe,,, arising under the constitution law.

(acts) or treaties of the United State,

> While petitioner,was station ... in Germany,during the Vietnam era (notable histrical events) The teacher for continues adult education US Army: Jo Ann from Nashwille: walk up to petitoner, ask petitioner will you visit Tennessee, when you return to the United States: She was from Nashville Tennessee.

Modern Americans are not very proud of the Indians. There is to day widespread appreciation for the dignity honesty and uniqueness of the Indain culture, most of which are gone forever. The feeling is widespread too,that every effort must be made,at this hour,to rect ify wrongs against the Indians,,,,,

Petioner was discriminated against because of race and national origin, American Indian. For the following reasons

on p. 7.

Argument

During the time relvant to this case petitioner was employed at Kelly Air Force Base,as an Electrical Equipment Repair,WG-2854-09(Appellant brief No.92-5664 p.2).

On March 4,1991 and March 8,1991 petiton er motion the court for diquaification of judge Prado:455(b)91)where he has a personal bias or prjudice concerning a party. and to,assign civil casea Hernande z vs Sullivan No. SA-90-CA-799 and No. SA-90-Ca-771 to another judge.

Feb. 1,91-SA-88-CA-237 H.T. for San Antonio,dist. courtp.32 and p. 33,

Prado,you,said, damages,,

Petitioner, I wrote (it) down on the (pleading).

Prado, which was$3,000,000. for damages.

Prado,do you want me to make them make you a GS-13?

Judge Prado, did you know that title VII dosen't apply to a judge?
petitioner, no,but they got(other)Laws that do.

The President of the U.S. and vise Pres. have jurisdiction to remove,fed.judges, clerks, asst. U.S.Attys, Military general , cir. judges, Supreme court clerks, justices, etcs.

Tape No. 2-00-0 acording to GS-13 position,,(defendant),,, Oct. 23,1991/#1540

Tape 2-00-8/Oct. 23,1991 Prado,I don't se e anything ,,,,, Tape31540.

Tape # 1540/Oct.23,1991 (2-6016) Prado, is there going to be any additional resp onses are motions,,, filing summary judgment response motions?

Tape # 1540/Oct.23,1991(2-6-30),,,we should have a motion within two weeks, it should be dispositi.

Tape31540/Oct.23,1991(2-6-38) Prado.OK. I'll look at that motion,,,,

Tape# 200D Nov.18,1991(9-39-01)Petitioner BOBY Mc Gee,, quality inspector,, he said that he kmews you. I think this is import ant that I state this,, he said, his not going to do a dam thing for you,because I know him,,,,

Tape # 200D Nov.18,91(9-39-31) They(Air Force) eliminate quality(inspection pro-gram).

One year 6 monthes after,on Sept.10,1992 Prado,order, the motion by petitioner to assign case No. SA-CA-771 of March4,1991 is denied.

On July 3,1991 petitioner file a civil action SA-90-CA-694,,it was assign to Pra do by the clerks.

On August 20,1992,Prado, assigned case No. SA-91-CA-694 to judge Garcia. On Aug ust 20,1992 Judge Garcia order summary judgment for defendant.

The issue presented, the employer improp erly rejected portion of petitioner EEO

complaint by alleging petitioner fail to seek EEO counseling in a timely fashion. Other cases have specified that a bad fai th promise by an employer which results in the employee foregoing the opportunity to timely file a charge is a proper equit able consideration which may allow an untimely filing by a complaint, Diiman vs Combustion Engineering,Inc. 784 F2d 57 (2nd Cir. 1986).

(1) Petitioner was tranferred on Jan. 6,1990 from the exciter shop to harness shop. Hannan vs Chrysler Motor Corp. 443 F. Supp 802; where plaintiff was a satifactory employee,, force retirement,,,

Mechanic at harness shop why you always list to country music?

(2) Petitioner, was required to wear safe ty glasses alday, and still boots, is in conflict with Air Force regulations(wear safety boots only when working with Units that weight over 50lb.s See Kelly AFB vs Tennessee Valley Authority.

(3) Between March 1989 and Jan.1990, pet itioner did not get electronics continues adult training by Kelly AFB.

On May 1990,petitioner, was interviewed by EEO Lead counsel Hazel(black)and Yolanda Aranda(Hispanic) about this EEO complaint. Not getting extra training in electronics. The EEO counsels responded, by saying "pay for your own training out in the private sector, you get enough training from the Air Force as an Air Craft Techn."!

Petitioner, reply :"why should I pay for my training out in the private sector, the U.S. gov't pays for every bodies training at Kelly AFB.

see Kelly federally employed women asso.:local groups 200 / convention S.A.Tx., Denver Col.,Cininati Ohio, Las Vagas. Guse vs J.C.P.Inc. 562 f2d 6.

(female) employee brought sex discrimination class action alleging that employer unlawfully failed to provide same benefit

and compensations to female employees who were disabled from performing their assigned duties by reason of pregnancy,miscarrage,abortion, childbirth, or recovery therefrom as it provided to employees with disabilities or medical expenses due to other causes.

(4) Adver action by managment: claiming petitionerleft tool box open.

Trevino, took over electric section, Feb.89. Managment claim on March 89,petitioner left tool box open. Chief RCC Ramon Perez,check tool boxes, from 86 to 89, never found petitioners tool box open. see Appendix A .of petitioner special tool to install new bears, made by petitioner in March 83, used by the employer since 1983.

The directorate of maintenance has every reason to be poud of this noteworth contribution (special tool made by peti

tioner) to the San Antonio Air Logistics Center. We are extremely proud of this ac complishment. Signed Lewis G. Curtis, Major General,USAF Commander.

(5) On April 17,1990 petitioner recieved an unacceptable slightlyfuly sucessful promotion rating, for period Feb. 89 to Jan. 90. Petitioner complaint that it was not satifactory to my work performanc The employer change the promotion rating to fullysucesfull, which was lower.

May 1990 petitioners EEO complaint was review by EEO counsel Hazel,and Aranda.

The employer by losing the medical records on Knee injury(Baptist Hospital) on are about July ,1990, and returning a unit sham, the effect action which impact ed adversely on the EEO complaint follow ing my protected activity under title VII.

The action followed the protective activ ity within a period of time that a retal iatory motive can be inferred, therefore,

the complainant has established a prima facie case based on reprisal. see petition for a writ of certiorari cc: to Supreme court,and Atty general U.S. Feb 1992. p. 10,Baptist Hospital.

On are about March,91, Elmira was seen in bldg 326,at at the T.O. libruary, having a conference with out ii women.

On are about March , Dana, move to the harness shop.

Dana set in front of Elmiras desk. petitioner,ask a mechanic who she was, mechanic said, she was the union steward

Dana moved from Elmiras desk and set on the work bench back petitioner. Dana set an appiontment to meet, to discusse the EEO complaint.

At the meeting,Dana,said, that union steward Clayton Benton,would be representing me instead, because, she was going to be in the hospital having her child on April 1991.

Petitioner ask,Dana, why don't you ask for maternity leave, to the Air Force? Dana,said they,were afraid of managment

Fed. Mager asso. local 140.
asso w/ other mager asso.
Police mager asso. mem. 1500

On April26,1991 petitioner niece was shot in Dallas Texas. Venicia Hernandez Gamez, 16 year old-38 weeks pregnant,but live long enough to safe her baby.

On July 14,1990 petitioner motion dist court to object to notice od deposition. Pursuant to 3 Moor's F.R. 17. it allows the use of arbitration incivl actiona where the parties consnt and to require the use of arttration in civil action where the relief sought consist of money damages only not in excess of $100,000.

On July 13,1990 judge Prado order that Petitioner appear at U.S. Atty office on August 13,1990.

The deposition at the U.S. Atty office was on the civil sue of $ 3 million : of

March 10,1988: SA-88-CA-237,
Petitioner writ of certiorari granted by the Supreme court of the U.S. .
At the deposition Gene Steel was the cou rt reporter,210 Rio Seco, San Antonio, Texas 78232.
At deposition questions by Moynhan from Manhattan New York city.
Moynihan Q: is your father an American Indian? petitioner, yes.
Moynihan: show petitioner the green certify mail card, of 18,1989, use to motion the dist, court to dismiss.
Moynihan: who's signature is this on the green certfy mail card?
Petitioner, my fathers signature.

60 days after the deposition petition ers father died at the emergency hospital at the southeast Baptist hopital 4214 E. southcross S.A. Texas 78222; on NOV. 15, 90.

On June 4,1992 EEOC WDC OFO, you have ... the right to file a civil action,,in an appreprate U.S. dist. court. You have the right to request counsel.

On July 3,1991, petitoner saw Moynihan at the clerks office. petitioner was decketing the case SA-91-CA-694.

Petitioner,today is my last day to service your office.

On July 3,1991 petitioner,request the service of the asst U.S. Marshal Gary San Antonio,Tex.

Gary,said, the cost to service the U.S. is $80. cash. If you do not have $80. L will not service the U.S. Atty. Petitioner,said, the U.S. Marshal only charges $40.

Gary,said, it went up to $80. new Law.

Then, the office of theU.S. Marchal send a refund for $40.

U.S. Marshals are appionted by the city or borough. Performs the same duties as

the constable or sheriffs do for the states. An officer some times attach to a magistrates.

The atty general shall:(a) supervise and direct the adm. and operation of the DEPT. of justice, including the office of U.S. Marshals. Supervises all Supreme [illegible] cases.

U.S. Marshal at W.D.C. investigates alleged improper conduct on the part of U.S. Marchals services personall.

Conclusion

The dist. court err in granting summary judgment to defendant,and 5th granting sanction of $500. Atty fees and double [illegible] cost.

Petitioner, file sue in the amount of

$3000.000. in the dist,court

Moose vs Sun Oil Co. 636 F2d 154(c)

grant punitive damages in the amount of,,

Respectfully Submitted

Signature of Pro Se
Petitioner:
406 "H" ST.
San Antonio,Texas 78220
Abel H. Hernandez
(212) 333-1600

CERTIFICATE OF SERVICE

I Abel H. Hernandez, do hereby certify that three copies each of the fore going Petition for a Writ of Certiorari to U.S. court of appeals for the Fifht cir. was service prepaid to the Solicitor General Dept. of Justice,Washington D.C. 20530. On the 20 day of May,1993.

Abel H. Hernandez

Appendix A

a20

INTERNATIONAL DETECTIVE TRAINING SCHOOL : P.O. BOX 4352
WASHINGTON D. C. 20012

SEPTEMBER 23 ,1981 .

TO WHOM IT MAY CONCERN :

RE: ABEL H. HERNANDEZ

NO: 4036

The above name person is a graduate of THE INTERNATIONAL DETECTIVE TRAINING SCHOOL , having completed our Home STUDY COURSE IN DETECTIVE TRAINING with an average grade of 86 per cent .

While enrolled as a student in our SCHOOL , he fulfilled all responsibilities to our entire satifaction . The student was

conscintious , painstaking and punctual in the work prescribed .

I found him industrious , careful in fellowing instructions ,and eager both to please our instructors and to learn the maximum from the subject matter furnished .

From my experience in working with the subject , I feel he will prove a every satisfactory employee in any position for which his education and experience might qualify him and I , personally , will appreciate any consideration shown to him .

San Antonio College

San Antonio Texas

Be it Known That

Abel Herrera Hernandez

has completed the prescribed requirements

and is entitle to receive this

Certificate of Completion

May 13,1979
Date

Jerome F. Weynand
President of the College

W.W. Mc Allister,Jr.
Chairman

Truett L. Chance
Dean of College

Stan Burton
Secretary of Board of Trustees

August 21,1978

Jerome Weynand
San Antonio College
San Antonio, Texas

Dear Sir:

Because of the nature of my problem, I am at this time requesting in written from a detailed explanation of my grades received in my History class, and in my Debate class at San Antonio College. Until such time that I may personally talk with the individual teachers involved, I am requesting from your office transcript of my grades received.

I feel that the grades I received in these classes are unjust and I wish to personally speaking to each instructor to explain my position. I beleive I have reason for a change in my final grades received in these two classes.

I made an appeal to the committees and their reaction to my appeal was to seek out the instructor.

DEPARTMENT OF THE AIR FORCE
Headquarters San Antonio Air Logists Cent
er (AFLC) Kelly Air Force Base.Texas
78241-5000

DEC 16,1985

Reply to
Attn of: DPCSI

Subject: Records of Abel Hernandez

To: DPCXT

1. Attached you will find the placement Data Brief for Mr Hernandez and a certificate of training for a course entitled Aircraft Pneudraulic Systems Mechanic course.

2.,,,,,,,,

Signed Antonio Salas
Chief, Maintenance Staffing

2 Atch
1. Placement Data . . :
Brief.
2. Certificate of training.

DPCCI/58955 Career Brief MATPPA/ Hernandez 3-21-86

Attached are two copies of your current career brief. Please review,sign and return one copy to this office. It will be filed in your OPF for your future use.
siged Evelyn Alva M.Classificatien FDP

Suggestion No. 87-2655 June 26,1987
Booket with all part number and stock No.

To order parts at Mic/ T.O. only gives part number,,,(no Stock Number),,.

If Air Force makes a small handbooket for each shop, as part of tool box. save time,and aceuracy to order from Mic. Booket with part number and stock numbers on each T.O. .

,,,,

Every Organization/shop on base, that don't have one, at present: and every Air Force Civilian base that don't have one.

Signed Abel H. Hernandez
cc: Phyllis B. Lane/ suggestion program
Personal Data.

Abel H. Hernandez Sept. 23,87

To: DPF

I would like my suggestion SA86-159 to be re-evaluated as I feel the $100 award made on it is not sufficient.

Facts that should be consider are.

(1) The tool I modified/made/was not in use,(because they did not have one to use

(2) Before my suggestion was implemented the bearing were not being replaced in the pumps; this grudually cause other parts to ware prematurely.

(3) With my tool new bearing are now be ing installed making this a true overhaul

(4) I know my suggestion contributes to extra service in flight and there for has a larger tanglble saving;base on extente service life.

Rcv (/24 Chis Vance

cc.P.E. Ferrdner
Suggest. Program
Kelly AFB Tex.
Personal Data.

Sincerily

Abel H. Hernandez

In the United States District Court
for the Western District of Texas
San Antonio Division

Abel H Hernandez,
Plaintiff,
vs Civil Action No.
Donald B. Rice Secret. Sa-91-CA-694
Dept. of the Air Force.

Object

Object to Sept. 15,1992, Magistrate judge's memorandum and recommandation pursuant to Fed. Rules of civil Proce dure 73 (b) Consent.

No district judge,magistrate or other court official shall attemt to persuade or induce a party consent to a reference of a civil matter to a magistrate under this rule,nor shall a district judge or magistrate be informed of a party's resp onse to the clerk's notification, unless all parties have consented to the referr al of the matter to a magistrate,

Object with conclusion
of law to Primemo and
O'Conner magistrate

memorandum and recommandation

O'Conner cites a case of class action,as a conclusion of law to interfere with the working class; rights to sue under Title VII. Ries vs Enterprise Ass'n Steamfitters loc U 3638 of U.A. 520 F2d 352. U.S. court of appeals, second cir. Argue May 1,1975. Decided June 241975. After a federal court had entered an order in civil rights action requiring affirmativ action on the part of aunion to remedy racial discrimination in its membership, and while an appeal from that order was pending, while members of asserting that they were victims of discrimination by the union in regard to certain perferenc given to members of the "A" branch of th union. The U.S. district court for the Southern district of new York, Dudley B Bonsal,J., denied the application to intervene and the applicants appealed.

Plaintiff suer file this civil action from a final decision of the agency con cerning my EEO complaint of unlawful emp loyment discrimination, in the civil rights act of 1964,as amended, 42 U.S.C. 2000e et seg.

This conclusion of law is submitted in according to are conversation of OCT. 7, 92, with asst. clerk Garcia/ request a conclusion of law.

signed Abel H Hernandez
signature of Pro Se
406 "H" ST.
San Antonio Texas 78220
Abel H Hernandez
Submitted Oct. 8,1992

cc: Jack Moynihan
asst U.S. Atty
Robert O'Conner
magistrate judge
John W. Primomo
magistrate judge

In the United States District Court
Western District of Texas
San Antonio Division

Abel H Hernandez
Plaintiff,
vs
Donald B Rice,Secret.
Dept. of the Air Force,
Defendant.

Civl No.
SA-91-CA-694

Order

On this date came on for consideration by the Court plaintiff's submissions objection to the magistrate judge's Sept 15,1992 order denying plaintiff's requ est to proceed in forma pauperis on appeal. The court has reviewed plaintiff numerous submissions containing his ob jections as well as the entire recond.

The magistrate judgefound that the district court had granted summary judge for defendant on August 20,1992 after that plaintiff had submitted no cintrov erting evidence. The magistrate judge al so found that plaintiff had listed the issues which he intended to appeal. He

found that plaintiff had explained why summary judgment should not taken in good faith and was frivoleus.

Plaintiff's objections cite federal [illegible] Rule of Civil Procedure 73(b) provides the opportunity for litigants to consent to civil trial jurisidiction before the magistrate judge.

This cause did not involve consent jur isdiction. Pliantiff's other legal and factual propositions similarly do not affect the magistrate judge's assessment of the issue. The decision by the Air [illegible] Force Review Board in the matter also does not alter the conclusions reached by the magistrate judge.

After due consideration of each of [illegible] plaintiff's objections in conjunction with the entire record in this case, this court finds that the magistrate judge's Sept. 15,1992 order denying

plaintiff's request to proceed in forma pauperis on appeal is hereby in all things affirmed.

signed this 15 day of October,1992.

signed H F Garcia
H F Garcia
U.S. Dist. Judge

In the United States Distrcit Court
for the Western District of Texas
San Antonio Division

Sept.3,92

Abel H Hernandez
Plaintiff,

vs Civil Action No.
SA-91-CA-694

Donald B. Rice Secet.
Dept. of the Air Force,

Notice od appeal to the Fifth Cir. Court of Appeals,Under rule 3.

Appellant Abel H Hernandez appeals clerk judment for Donald B. Rice,of August 20,19992.

Defendant's motion for summary judgment is granted,signed judge H.F. Garcia,on August 20,1992.

On Sept. 10,1992 the defendant filed a motion to dismiss, or in the alternate for summary judgment.

District court clerk judgment of August 28,1992. Second part of order,defendant's motion to dismiss is denied as moot.

Appellant statement on 28 August 92. As a matter of law pursuant to Fed. R. Civ. P. 56 (c) . Was not considered in the judment by the dist. court clerk on 31 August 92- to deny appellant response on order of 28 Aug.92.

The following documents evidences will be on appeal. All documents on recond will be used on appealon record excerpt for appellant.

1. appellant Pleadings of July 3,1991./
2. Civil Docket for case#910CA-694./
3. Order August 20,92./ 4.Answer to defe ndant motion for stay of march 30,1992. 5. Clerk order deny appellant response, 31 August1992/ 6.Hernandez vs Rice No. 89-486/ Petition granted by Supreme court of the U.S../ 7. 110 Supreme court re porter Hernandez petitioner vs Rice secr etary of the Air Force No. 89-486.

Respectfully Submitte

Signed Abel H Hernandez

Abel H Hernandez
406 "H" ST.
San Antonio Texas 78220
Sept. 3 1992

I Abel H Hernandez
mailed a copy to US Asst
Atty Jack B. Meynihan
on Sept. 3,92.
727 E. Durange blvd
San Antonio,Texas 78206

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

US COURT
OF APPEALS
F I L E D
FEB 22 1993
RICHARD E.
WINDHORST,
JR. CLERK

No. 92-5664

Summary Calendar

ABEL H. HERNANDEZ,

PLAINTIFF-APPELLANT,

VERSUS

DONALD B. RICE,

Secreatary, Department of the Air Force,

Defendant-Appellee.

Appealfrom the United States District Court for the Western District ofTexas

(SA-91-CA-694)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges. JERRY E. SMITH, Circuit Judge:

I.

A.

Abel Hernandez worked at Kelly Air Force Base as a pneudraulic systems mechanic. On April 27, 1990, he first contacted an Equal Employment Opportunity (EEO) counselor regarding five alledged acts of discrimination, claiming he was discriminated against based upon his race (American Indian), color ("dark brown"), and religion ("Study of Scientific Belief and Nature"). Hernandez alleges five specific acts of discrimination as follows:

1. He was transferred on January 6, 1990 from the Exciter shop to the Cable shop.

2. He was required to wear safety boots and glasses on January 6, 1990.

3. Between March 1989 and January, 1990, he failed to recieve additional job training.

4. On March 27, 1990, he was warned about leaving his tools unattended.

5. On April 17, 1990, he recieved a performance rating that he considered to have been to low.

---

*Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the bases of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has dtermined that this opinion should not be published.

Pursuant to 29 C.F.R. 1613.214(a)(1)(i), defendant notified plaintiff that the first four allegations were rejected as untimely filed. Hernandez appealed this rejection to the Equal Employment Opportunity Commission (EEOC), which affirmed the defendant's partial rejection to the Equal Employment Oppertunity Commision (EEOC), which affirmed the defendant's partial rejection of Hernandez's claims. The defendant proceeded to inv-

estigate the fifth claim and found that Hernandez's appraisal rating was not the result of discrimination.1

Specifically, the defendant found Hernandez had with the following: (1) spending too much time away from his work area; (2) an inability to work on different equipment

(3) undue reliance upon his supervisor when confronted with a problem;

(4) difficulty relating to other employees;

(5) difficulty following technical orders; (6) ordering parts in excess quantities when the service was attempting to keep inventories low; and (7) an unwillingness to follow the orders of his supervisors.

---

1 Although Hernandez's appraisal rated his performance as "fully successful," he claimed he deserved the highest ratings possible for eight of thenine appraisal categories.

B.

"ernandez, acting pro se, filed suit on July 3, 1991, challenging the five alleged acts of discrimination outlined above. On August 20, 1992, the district court granted summary judgement for the defendant.

II.

A.

The decision of the district court is correct as to the first four allegations of discrimination. Hernandez did not report these alleged incidents within thirty days, t ough he plainly knew about each of these events on the it occurred. Under EEOC regulations, these claims were not timely. See 29 C.F.R. 1613.214(a)(1)(i).

In apprpriate cases, the filing deadline is int he nature of a statute of limitations, subject to waiver, estoppel, and

equitable tolling. Henderson v. United States Veterans Admin., 790 F.2d 436, 440 (5th Cir. 1986). Obviously, this case does not present a proper occasion to depart from thenormal deadline. Hernandez was well aware of these deadlines, as he previously had filed six discrimination claims against the same employer, yet he failed to produce any summary judgement evidence supporting an exception to the thirty-day dead-line.

B.

The district court's decision as to the fifth alleged act of discrimination also is correct. The defendant proffered ample evidence as to why Hernandez recievied his score on his evaluation. Once defendant made a prima facie showing that had a legitimate non-discriminatory reason for the adverse action,2 Hernandez had the duty to produce some piece of evidence tending to raise a material issue

of fact as to whether defendant's justifications were pretextual. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Because Hernandez did not produce any evidence of discrimination, the district court properly granted summary judgement.

III.

The defendant asks that we award sanctions against Hernandez for filing a frivolous appeal. Hernandez has filed six previous complaints against defendant for alleged discrimination. Apparently, he blames all of his problems on discrimination and continues to use the judicial system for the purpose of harassment.

We have previously awarded sanctions Hernandez for filing a frivolous appeal

2 We use theterm "adverse action" only as a term of art. Hernandez's evaluation was "wholly successful," which would not seem to be an "adverse action." Hernandez claims only that he should have had a better rating. Given that his evauation was "wholly successful," however, Hernandez does not indicate how was harmed in any way. In other words, he has not identified any loss of benefits from his rating.

in a discrimination case. Hernandez v. Rice, No. 91-5785 (5th Cir. Sept. 29, 1992) (unpublished). The district court in the present case refused Hernandez's motion to proceed in forma pauperis based upon its dtermination that the appeal would be frivolous. We agree that the appeal is frivolous. Hernandez produced no evidence in response to the motion for summary judgement and does not come close to having a meritorious arguement on appeal.

Although Hernandez proceeded pro se he had "no liscense to harass others, clog the judicial machinery with meritl-

ess litigation, and abuse alre dy overl-
eaded court dockets." Fargusen v. MBank
Houston, N.A., 808 F.2d 358, 359 (5th -
Cir. 1986). We may properly award sanc-
tions to deter future abuse of the cour-
ts. Coghlan v. Starkey, 852 F.2d 806, 81
816 (5th Cir.1988) (per curiam).

Our prior sanctions of Hernandez a-
pparently had no effect on him. As a r-
esult, we will award slightly larger sa-
nctions this time with the hope that He-
rnandez will stop his abuse in the futu-
re. We warn Hernandez that penalties
for any future friveleus filings will be
more severe. Because Hernandez had no
nctions this time with the hope that He-
rnandez will stop his abuse in the futu-
re. We warn Hernandez that penalties
for any furture friveleus filings will
be more severe. Because Hernandez had
no basis for his position on appeal, we

grant defendant's request for sanctions and impose sanctions in theamount of $5-00.00 attorneys' fees and double costs.

The appeal is friveleus and is hereby DISMISSED pursuant to Fifth Cir. Loc. R. 42.2.

CRISIS IN COMMAND

*****

Mismanagement in the Army

Richard A. Gabriel

and Paul L. Savage

Americans who believe that the United States Army is a fit fighting force may be in for a rude shock. The authors of this powerful and frightening book. former soldiers long and intimately associated with the Army, demonstrate that our national defense is far weaker than we may imagine. In the event ofanother war, we face the possibility of rapid defeat because of military mismanagement.

Even before the final debacle in Vietnam (when, as t e authors show, our forces were strong indications that our officer corps was more concerned with furthering their individual careers than with developing

cohesion. Honor, integrity, and personal responsibility had been abandoned to selfish ends. It was not the antiwar sentiment at home that destroyed the Army's effectiveness; it was the Army brass itself.

The war in Southeast Asia saw hithero virtually unheard-of assassinations of officers ("fragging"); combat refusals in high numbers; falsified reports; events like that at My Lai; an inflated officer corps; the bestowal of unearned medals and honors; a rotation system that discriminated against enlisted men; an emphasis on body count; racism; andaherein trade and dope addiction of epidemic proportions that the military managers either ignored or were ignorant of. Most of these problems were notcaused by the war; they were brought to light and exacerbated by it.

In spite oftheclaim that thefaults so evident in Vietnam have been corrected, today's Army remains ill-prepared. This

startling book provides thedocumented ev-

idence.

This book has been purchased for
theSan Antonio Public Library system
from Federal funds distrubuted through
the Texas State Library.

Daley Joseph, a Democrat, was major of Chicago. He was one of the most powerful political leader in the United States.

Daley headed the Cook County Democratic organization,perhaps the strongest polit ical mechine in the U.S.. He became an adviser to President Lyndon B. Johnson. Under Daley's leadership,Chicago reorgan ized its police department,encouraged the struction of many major downtown buildings. In the early 1970's Daleys administration was rocked by several scandals and trials involving corruption.

Many high officals were found quuilty. Over 50 police officers were convicted of taking bribes from tavern owners.

Ohio Gang: A group of Politicians; chiefHarry M. Daugherty aided in secur ing the nomination and election of Warren Harding:
Harding Pres. U.S./Ohio Senator/Nomina ted for Pres. in Repoblician Nat'l convention Chicago Ill. 1920.
Member of the Baptist Masons.
Harry was appionted U.S. atty by Pres. Harding.

EDMUNDO M. ZARAGOZA executive director

EODC of S.A. and Bexar County,Texas P.O.

Box 9326- S.A. Texas 78204. Sept. 7,1978

The Honorable Henry B. Gonzlez,M.C.
727 East Durango,Suite B-124
San Antonio,Texas 78206

Re: H4-78r
Mr. Abel H. Hernandez

Dear Congressman Gonzalez:

This correspondence is in response to your letter of August 15,1978, concerning Mr. Abrl H. Hernandez, who had applied for the position of center manager I within EODC, Early Childhood Development Programs.

While Mr. Hernandez's resume did not show any experience in woking with young children, which the position required, his indicated work experience in other area to include the military, was impressive enough for him to be granted an interview for the position. Before a final selection was made this position was abolished because of a reductuion in program funds.

Upon his expression of interest, Mr. Hernandez will certainly be given fair consideration for employment with this organization.

Respectfully your, Hbert H. Hawkins
EODC director of personnel

Community Action for community Progress-manpower * education * health * youth servers * housing * nutrition * social servics Mr. Micheal P. Rodriquez Pres./ Mr. Herbert Holston 1st vice Pres./ Mrs. Beverly Halter 2nd vice Pres./ Mr. Jose Luis Rodriquez-secretary/ Mr. Jose V. Cortez Treasure/ Mr. Jose Snider Parliamentarian/ Mr. Max Navarro Past Pres. :

August 18,1978

Mr. Roy Burley
State Representive Lou Nelle Sutton's
Office 1609 E. Houston Street
San Antonio, Texas 78202

Re: Abel Hernandez
SAC Student

Dear Roy:

As per your request of August 14,1978, I have inquired into the concerns of Mr. Abel Hernandez.

His major complaints were that he was not graded properly, that he was being discriminated against and that his compl-ains were falling on deaf ears.

I spoke with Dr. Weynand (Jerome F. Weynand President of the Colleges)and Dean Chance(Dean Truett L. Chance) regarding Mr. Hernandez. I also review his transcripts and I am satisfied that there is no basis for Mr. Hernandez's complaints, which I so informed him.

Mr. Hernandez could not accept my opinon that he could not pass judgment on himself

with reference tohis grades. That he is the student and it is the responsibility of his teacher to grade him in his performance and not vice*versa. My recommandation to Mr. Hernandez was that he apply himself in achieving his goals working harder in his studies.

Mr. Hernandez's response was that I had been " brainwashed " and had been ddazzled with "goodies goodies". He accused the college administration of being Ku-Klus Klansmen and of being guilty of white collar crimes and that justice had to prevail.

My feeling is that Mr. Hernandez seems to have severs persecution complex. Orderarily, I would not involve myself in administrative matters, however, I can understand your position.

I hope that I have been able to be of some help to you in resolving your concern.

Sincerely Dan Martinez/ cc: Dr. Weynand.

Conserning Socialism and Communism

Marx,Karl(1818-1883)

Karl Marx was a German econemist and philosepher whose ideas have had an enormeus impact en the 20th cantury. Modern Communism has taken much ef its philoseph y frem his theories.

In 1864 he founded the International Werkingmen's Association,later knewn as the First International. In 1867 he publ ished the first part ef his great work Das Kapital (Capital), an analysis ef the economics ef capitalism.

Ther are 18,000,000 union members in the United States. Seme 13,500,eee. ef them belenge te AFL-CIO (Kelly AFB Laber Union is a member ef AFL-CIO) in natienal and internatienal unions. Net all unions are associated with AFL-CIO. Certain unions belenge te twe miner organizations- the Confederated Union ef American and

the National Independent Union Council. Other are independent. The most import independent unions are the Inernational Brotherhood of Teamsterg (I.B.T.), with about 1,400,000 menbers, and the United Mine Workers (U.W.W.A.), with a membership of around 600.000.

The new clerk of the Supreme court is a former GAJ. All petitions since Suter took over have been rejected.
If the clerk of the Supreme court does not affort a country man an opportunity he does not deserve to be the clerk of the Supreme court.

The military uses the FBI and CIA and train them and equip them with especial equipment.

The article continues with a short dscussion of the evolusion of Marxist and Leninist ideas concerning the nature and purpses of law. Included is glimpse at the contributions of specified Soviet

scholars.

Soiet International Law today:

By Major Eugene D. Fryer**

JAGC, United States Army; chief, Internat
tional Law Division, The judge Advocate
General's,

Dept of Human Resourse of Texas, repon
se petitioner s writ of certiorari to
Supreme court mail certify, tocopy to
US Atty Gen. WDC.(th day of July 1992.
p. 6 It also contained 203 pages of exhib
its,, an what appeared to be an entire
article (29 pages) entitle " The Wisdom
of Confusions."

SEE also Chinese Thaught from confu-
cius to Mao Tsetung by Herrlee G. Creel.

Title 29:(a) supervisor as Union members
Nothing herein shall prohibit any indiv
idual employed as spuervisor from be
coming a member of a Labor organization.
see Kelly managment association intereste
parties in the out come of this case.

See Directory Volumes for Industrials, Business Directory's, Hospital Personnel Directory's, Hotel Directory's Manufacturer's Directory's etc's. See Baptist mason librauians. At your local main library, Business and Science section.

The world is moved by the light of genius.

Gilliam,sent me a letter explain your EEO complaint. see letter(light of genius). before,pre EEOC hearing.

Marx thought, the workers would overthrow capitalism and take power. They would then work to create a communist state, in which all the people would own the means of production - factories, mills, farmlands, and the like. When the ideal had been reached, government would no longer be needed because there would no longer be conflict between privilaged groups and those without privilage.

See page 7 Hernandez vs Sullivan & the Texas Dept. of Human Resources,. Brief for respondants, (Sullivan from northern states ..

New Jersey) page 7 It does cite to one case, Hayes vs Irwin , The principle forwhich this case is cited is a mystery, however Hays appears to be a business tort case, (respond for defendant written by Feeney Joseph Patrick from the northern states Indiana), see civil war and Indiana,

pg 6 It also contained 203 pages of exhibits,,,, an what appeared to be an entire article (29 pages) entitle "The Wisdom of confusions."cc: to the Supreme Court Justice Sandra O'conner, Feb. 22,92.

see also Chinese Thought from confucius to Mao-Tsetung by Herrlee G. Creel.

New EEO Chief March 91: member of Mex. Amer. Business and Professional club. On 1992 call EEO Chief Dora;about an EEO pending at Pendagon, she don't know what to do.

In 1921,the Kleagls,the salemen of the Klan,in Texas were by the thousands.

In August, 1861 Grant read in a St. Louis newspaper that the president had made him a brigadier general.

Grant at Westpoint: his record as a student was only average.

Grant was in the battle of Shiloh in Tennessee, in which the Union and Confederate losses totaled over 20,000.

Grant captured the Confederate stronghold in Vicksburg, Mississippi river.

It was a long bloody campaign, for Lee was a great general.

Grant was born in Point Pleasant, Ohio, attended school in Georgetown, Ohio.

The Republican Party nominated Grant: for president: Schuyler Colfax of Indiana was nominated as Vice-President.

Grant's first term as President of the United States tried to annex the Dominican Republic.

Grant's Vice-President in his second term was Henry Wilson ofMassachusetts.

Genral Lee from Stradford, Virginia. Confederate President: Jefferson Davis, (from New Orleans) appointed Lee as his military advisor.

100,000 troops under General George McClellan: at the battle of seven days: Lee sent General McClellan army realing back.

Grant, headed for Richmond with an army ofwell over 100,000 men. General Lee, with only 60,000 men: Lee moved swiftly to stop him. All month long, the same fighting went on; Grant lostalmost 60,000 men, and Lee half that number.

Appendix S

Stand Watie, Indain Leader, made commander brigate general by the Confederate government. Berm at what is now Reme Ga.

Boundaries of the Cherokee Nation in 1831.

Son of Uwati and part cherokee Suannah Reese. Was educated at the Mission schools He came to command two regiments of Mounted Rifles and three battalions of Cherokee, Seminole and Osage infantry that fought in the Indain Territory, Arkansas Missouri,Kansas, and Texas.

His famous for his role in the Battle of Pea Ridge, Arkansas,in which his troops captured the Union artillery poitions that were inflicting great damage on the confederates.